

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXXX

Petitioner

v

File No. 120422-001

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
this 17TH day of October 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On April 5, 2011, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The Commissioner reviewed the material submitted and accepted the request on April 12, 2011.

The Commissioner immediately notified Blue Cross Blue Shield of Michigan (BCBSM) of the external review and requested the information it used in making its adverse determination.

The Commissioner assigned the case to an independent review organization (IRO) because it involved medical issues. The IRO provided its analysis and recommendations to the Commissioner on April 26, 2011.

II. FACTUAL BACKGROUND

The Petitioner receives health care benefits as an eligible dependent through a group plan underwritten by BCBSM. The terms of his coverage are found in the *Community Blue Group Benefits Certificate* (the certificate).

On January 6, 2011, the Petitioner underwent intradiscal electrothermal therapy (IDET). The charge was \$3,400.00. BCBSM denied coverage for the IDET on the basis that it is experimental for treatment of the Petitioner's condition.

The Petitioner appealed the denial through BCBSM's internal grievance process. BCBSM held a managerial-level conference on March 2, 2011, and issued a final adverse determination dated March 24, 2011, upholding its position.

III. ISSUE

Did BCBSM properly deny coverage for the Petitioner's IDET procedure?

IV. ANALYSIS

Petitioner's Argument

The Petitioner suffers from degenerative disc disease and chronic pain. According to one of his physicians, he has failed to respond to conservative treatment. In December 2010, his pain specialist suggested that he might benefit from IDET. The pain specialist recommended IDET at the L5 - S1 level rather than a more invasive, more expensive, and higher risk surgical procedure such as a spinal fusion. On January 6, 2011, he underwent IDET therapy. His doctor notes that the therapy has improved the Petitioner's condition.

The Petitioner argues the therapy was medically necessary for his condition and states it was approved by the Food and Drug Administration as safe and effective in 1998. He believes IDET is a covered benefit under the certificate and BCBSM is required to cover it.

BCBSM's Argument

BCBSM argues that under "Section 6: General Conditions of Your Contract," of the certificate, experimental treatment is excluded from coverage:

Services That Are Not Payable

We do not pay for experimental treatment (including experimental drugs or devices) or services related to experimental treatment. . . . In addition, we do not pay for administrative costs related to experimental treatment or for research management.

In Section 7 of the certificate, “experimental treatment” is defined as:

Treatment that has not been scientifically proven to be as safe and effective for treatment of the patient’s conditions as conventional treatment. Sometimes it is referred to as “investigational” or “experimental services.”

BCBSM also relied on its medical policy entitled, “Intradiscal Electrothermal Therapy (IDET),” in its decision to deny coverage. The policy concludes:

Intradiscal electrothermal therapy (IDET) is experimental/investigational. It has not been scientifically demonstrated to be effective as conventional treatment.

BCBSM states its medical consultants reviewed the Petitioner’s documentation and determined that IDET is experimental and therefore not a covered benefit under the certificate.

BCBSM also states that it contacted the Petitioner’s doctor’s office about his IDET and that the doctor’s office made it clear to the Petitioner that he was responsible for payment in full because his insurance would not cover this type of therapy. BCBSM further states the Petitioner agreed to this arrangement and paid for the IDET.¹

Commissioner’s Review

The question of whether IDET is experimental for treatment of the Petitioner’s condition was presented to an independent review organization (IRO) for analysis as required by Section 11(6) of the Patient’s Right to Independent Review Act, MCL 550.1911(6).

The IRO reviewer is a physician certified by the American Board of Anesthesiology with a subspecialty in pain medicine; a member of the American Medical Association and the American Society of Anesthesiology; and is in active clinical practice. The IRO report summarized the present state of research and evaluation of IDET, and then offered the following conclusion:

It is the determination of this reviewer that Intradiscal Electrothermal Therapy is considered experimental for treatment of the [Petitioner’s] chronic low back and leg pain as a result of lumbar regenerative disc disease. There is a paucity of peer reviewed medical literature to support the efficacy of IDET in reducing pain and improving functionality in patients with chronic discogenic low back pain.

¹ While the Petitioner may have been told by the doctor’s office that IDET was experimental and may have agreed to pay for it, there is nothing in the record to substantiate these assertions.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO recommendation is afforded deference by the Commissioner. In a decision to uphold or reverse an adverse determination, the Commissioner must cite "the principal reason or reasons why the Commissioner did not follow the assigned independent review organization's recommendation." MCL 550.1911(16) (b). The IRO reviewer's analysis is based on expertise and professional judgment and the Commissioner can discern no reason why the recommendation should be rejected in the present case.

The Commissioner accepts the recommendation of the IRO and finds that IDET is experimental for treatment of the Petitioner's condition and is therefore not a covered benefit under the terms of the certificate.

V. ORDER

Respondent Blue Cross Blue Shield of Michigan's March 24, 2011, final adverse determination is upheld. BCBSM is not required to provide coverage for the Petitioner's IDET.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.